

Memorandum 86-81

Subject: 1987 Legislative Program

At the September meeting, the Commission decided that it did not want to delay legislation in the field of probate until the entire Estate and Trust Code is drafted. The Commission requested that the staff make recommendations at the October meeting concerning portions of the new code that might be enacted in 1987 as revisions or additions to the existing Probate Code. This memorandum contains the staff recommendations concerning this matter and also lists other matters that might be the subject of legislation in 1987.

Attached as Exhibit 1 is a general outline of the new Estate and Trust Code. The outline gives a rough indication of what has been done and what needs to be done. The outline is somewhat misleading, however, because in some cases it notes that legislation has been "enacted." In fact, even though legislation has been enacted, there will be a need to review it in preparing the new code. This task will require considerable time and resources. For example, the State Bar Section is studying disclaimers (§§ 260-295). And a great deal of work will be required to study and perfect the division relating to multiple-party accounts (§§ 5100-5407). We will need to conform the guardianship-conservatorship provisions to the estate management and other provisions. We also have a list of deferred probate matters we plan to consider after we have completed the drafting of the new code.

Listed below are matters that the Commission may wish to deal with in recommendations to the 1987 Legislature.

Retroactive Application of Property Division Legislation

See Memorandum 86-86, to be prepared for the October meeting. We are awaiting the views of the Family Law Section and the Commission may decide not to introduce legislation on this subject.

Clean Up Legislation on Trusts

One matter that needs to be dealt with in cleanup legislation is the application of trust law to excluded trusts. See Memorandum 86-87, to be prepared for the October meeting. The Commission was of the view that this matter should be dealt with in urgency legislation, to become operative on July 1, 1987, the same time the comprehensive trust statute becomes operative.

Another aspect of trust law that needs attention is creditors' rights against trust assets and a claims procedure to cut off creditors' claims against trust assets. However, the drafting of legislation in this area would be complex and it may be difficult to draft legislation that will be generally supported by all interested persons and organizations. For this reason, the Commission may wish to complete work on the procedural aspects of probate of a decedent's estate (including the creditors' claims portion) before giving active study to a procedure for cutting off creditors' claims against trust assets. The question is one of priorities: Does the Commission wish to complete the work on revising the existing Probate Code provisions as soon as possible or is it willing to delay completing that task and devote staff and Commission time to claims against trust assets?

Probate Legislation

The staff believes that the Commission is in a good position to deal with the area of estate management (supervised estate management and independent administration) at the 1987 session. We have distributed a tentative recommendation relating to independent administration, and at the October meeting we will consider the comments we received on that recommendation. See Memorandum 86-85. The one problem the recommended legislation on independent administration presents is that independent administration powers are closely related to the powers of the personal representative who does not have independent administration powers. It would be highly desirable also to submit the new estate management provisions to the 1987 session. This would give us a comprehensive package that is not closely integrated with other aspects of the administration of the decedent's estate.

If our major recommendation in 1987 relates to estate management, the CEB could provide a good course that covered this aspect of probate law. In 1988, we will have completed the procedural aspects of a probate of a decedent's estate, from the opening of estate administration through final distribution, and CEB could give a good course on that aspect of probate.

The Commission should be able to perfect the independent administration legislation at the October meeting, except for the portion relating to the powers of the personal representative. That portion can be completed when we have perfected the estate management legislation.

The estate management legislation will also be considered at the October meeting. The staff believes that this legislation is in fairly good shape. It represents a major portion (almost one-third) of the division of the existing Probate Code relating to administration of estates of decedents. The draft statute and Comments consists of 165 pages, much of which is single spaced.

The staff recommends that the Commission have the objective of publishing a printed recommendation on estate management and distributing the printed recommendation to interested persons for review and comment. We anticipate that a xeroxed tentative recommendation on estate management would run over 200 xeroxed pages. The cost of reproducing and mailing a tentative recommendation of that size to more than 200 persons would be substantial. And the task of reviewing the tentative recommendation in that form would be so overwhelming that the staff doubts that we would receive many good comments from persons who have not already reviewed the meeting material as it has been produced by the staff. Accordingly, the staff recommends that our goal be to approve for printing a recommendation on estate management at the November 1986 meeting (or the December 1986 meeting at the latest). This would give us a basic 1987 probate bill that would cover independent administration and estate management.

The basic 1987 probate bill also can include recommended legislation on other aspects of probate law. But we would prefer not to include the procedural provisions, since we believe that those provisions would make a nice package for legislation in 1988 and it

would be easier for lawyers to grasp the provisions if they were presented at one time as a unit. Also, if the procedural provisions are presented as a unit, the staff and Commission will have an opportunity to consider all aspects of procedure in preparing the unit. The staff's experience has been that we discover the need to revise portions of the code already drafted when we study and prepare later portions. This is an especially important consideration in preparing the procedural provisions relating to probate of a decedent's estate. For this reason, and to avoid the interrelationship complications of a piecemeal approach, the staff does not recommend the fragmentation approach to the 1987 legislative package suggested by Valerie Merritt (Exhibit 3).

The other matters the staff recommends that the Commission deal with in the 1987 basic probate bill (to the extent that we can complete work on the matters in time to include them in the bill) are:

(1) Preliminary Provisions and Definitions. (We expect to distribute a tentative recommendation on this portion during September.)

(2) Administration of Estates of Missing Persons Presumed Dead. (We expect to distribute a tentative recommendation on this portion during September.)

(3) Nonresident Decedent. (We expect to distribute a tentative recommendation on this portion during September.)

The staff plans to give a top priority to drafting the general provisions relating to notices. If possible, we would like to include those general provisions in the 1987 basic probate bill before the bill is enacted. There may be other aspects of probate law that are sufficiently independent of the basic procedural provisions so that they could be included in the 1987 basic probate bill if they are perfected in time to do so.

The Commission determined to revise the provisions relating to notices in guardianship and conservatorship proceedings. A draft statute was approved by the Commission and the Executive Committee of the State Bar Estate Planning, Trust and Probate Law Section. We submitted the draft statute to the author of a probate bill introduced at the 1986 legislative session at the request of the State Bar Section, but the draft statute never was added to the Section's bill.

We will add those provisions to the 1987 basic probate bill unless they are beyond the scope of the title to the bill, in which case a separate bill will be needed.

There is one other aspect of probate law that should be the subject of a recommendation in 1987. That is Public Guardian and Public Administrator. The staff recommends that this be submitted in a separate bill because we anticipate that the recommended legislation will be controversial.

The recommendations concerning the 1987 legislative program are summarized in Exhibit 2 attached.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

*09/24/86

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ESTATE AND TRUST CODE

DIVISION 1. PRELIMINARY PROVISIONS AND DEFINITIONS

- Part 1. Preliminary Provisions (§§ 1-12) [Enacted, operative 1/1/85]
- Part 2. Definitions (§§ 20-88) [Enacted, operative 1/1/85]
- Part 3. Procedural Provisions (§§ 90) [WORK IN PROGRESS]

DIVISION 2. GENERAL PROVISIONS

- Part 1. Effect of Death of Married Person on Community and Quasi-Community Property (§§ 100-105) [Enacted, operative 1/1/85]
- Part 2. Surviving Spouse's Right in California Real Property of Nondomiciliary Decedent (§ 120) [Enacted, operative 1/1/85]
- Part 3. Contractual Arrangements Relating to Rights at Death (§§ 140-160) [Enacted, operative 1/1/85]
- Part 4. Establishing Fact of Death (§§ 200-212) [Enacted, operative 1/1/85]
- Part 5. Simultaneous Death (§§ 220-234) [Enacted, operative 1/1/85]
- Part 6. Division by Representation (§§ 240-241) [Enacted, operative 1/1/85]
- Part 7. Effect of Homicide (§§ 250-256) [Enacted, operative 1/1/85]
- Part 8. Disclaimer of Testamentary and Other Interests (§§ 260-295) [Enacted, operative 1/1/85, currently a division rather than a part]
- Part 9. Trust Company as Fiduciary (§§ 300-301) [WORK IN PROGRESS]
- Part 10. Determining Identity of Class Members (§§ 320-324) [TR 9/86]
- Part 11. Fiduciaries' Wartime Substitution Law (§§ 350-377) [WORK IN PROGRESS]
- Part 12. Probate Referees (§§ 400-453) [WORK IN PROGRESS]
 - Chapter 1. Appointment and Revocation (§§ 400-407)
 - Chapter 2. Powers of Probate Referee (§§ 450-453)

DIVISION 3. [POWERS] (§§ 1000-)

DIVISION 4. GUARDIANSHIP, CONSERVATORSHIP, AND OTHER PROTECTIVE PROCEEDINGS

- Part 1. Definitions and General Provisions (§§ 1400-1491) [Enacted, operative 1/1/81]
- Part 2. Guardianship (§§ 1500-1601) [Enacted, operative 1/1/81]
- Part 3. Conservatorship (§§ 1800-1910) [Enacted, operative 1/1/81]
- Part 4. Provisions Common to Guardianship and Conservatorship (§§ 2100-2308) [Enacted, operative 1/1/81]

- Part 5. Public Guardian (§§ 2900-2944) [TR 9/86]
- Part 6. Management or Disposition of Community Property Where Spouse Lacks Legal Capacity (§§ 3000-3154)
[Enacted, operative 1/1/81]
- Part 7. Authorization of Medical Treatment for Adult Without Conservator (§§ 3200-3211) [Enacted, operative 1/1/81]
- Part 8. Other Protective Proceedings (§§ 3300-3803) [Enacted, operative 1/1/81]
- Part 9. California Uniform Transfers to Minors Act (§§ 3900-3925)
[Enacted, operative 1/1/85]

DIVISION 5. MULTIPLE-PARTY ACCOUNTS (§§ 5100-5407) [Enacted, operative 7/1/84]

DIVISION 6. WILLS AND INTERSTATE SUCCESSION

- Part 1. Wills (§§ 6100-6390) [Enacted, operative 1/1/85]
- Part 2. Intestate Succession (§§ 6400-6414) [Enacted, operative 1/1/85]
- Part 3. Family Protection (§§ 6500-6614) [Enacted, operative 1/1/85]
 - Chapter 1. Temporary Possession of Family Dwelling and Exempt Property
 - Chapter 2. Setting Aside Exempt Property Other Than Family Dwelling
 - Chapter 3. Setting Aside Probate Homestead
 - Chapter 4. Family Allowance
 - Chapter 5. Spouse and Children Unprovided for in Will
 - Chapter 6. Small Estate Set-Aside (§§ 6600-6614) [Enacted, operative 7/1/87]
- Part 4. Escheat of Decedent's Property (§§ 6800-6806) [Enacted, operative 1/1/85]

DIVISION 7. ADMINISTRATION OF ESTATES OF DECEDENTS

- Part 1. General Provisions [Work in progress]
 - Chapter 1. Necessity of Administration (§§ 7000-7002)
 - Chapter 2. Jurisdiction and Courts (§§ 7050-7072)
 - Article 1. Jurisdiction and Venue
 - Article 2. Courts and Judges
 - Article 3. Transfer of Proceedings
 - Chapter 3. Rules of Procedure (§§ 7200-7499)
 - Article 1. General Provisions
 - Article 2. Petitions and Other Papers
 - Article 3. Hearings
 - Article 4. Orders
 - Article 5. Appeals
 - Chapter 4. Notices (§§ 7500-7599)
 - Article 1. General Notice Provisions (§§ 7500 et seq.)
 - Article 2. Request for Special Notice (§§ 7550 et seq.)
 - Article 3. Citations (§§ 7580 et seq.)
 - Chapter 5. Public Administrators (§§ 7600-7685) [TR 9/86]
 - Article 1. General Provisions
 - Article 2. Taking Possession or Control Property Subject to Loss, Injury, Waste or Misappropriation

- Article 3. Appointment as Personal Representative
- Article 4. Deposit of Money of Estate
- Article 5. Summary Disposition of Small Estates
- Part 2. Opening Estate Administration *[TR Distributed]*
 - Chapter 1. Commencement of Proceedings (§§ 8000-8007)
 - Chapter 2. Notice of Hearing (§§ 8100-8125)
 - Article 1. Contents
 - Article 2. Service of Notice
 - Article 3. Publication or Posting
 - Chapter 3. Probate of Will (§§ 8200-8226)
 - Article 1. Production of Will
 - Article 2. Proof of Will
 - Article 3. Contest of Will
 - Article 4. Revocation of Probate
 - Chapter 4. Appointment of Personal Representative (§§8400-8577)
 - Article 1. General Provisions
 - Article 2. Executors
 - Article 3. Administrators With the Will Annexed
 - Article 4. Administrators
 - Article 5. Bond
 - Article 6. Removal from Office
 - Article 7. Changes in Administration
 - Article 8. Special Administrators
 - Article 9. Nonresident Personal Representative
- Part 3. Inventory and Appraisal (§§ 8800-) *[Work in Progress]*
- Part 4. Creditor Claims *[TR Distributed]*
 - Chapter 1. General Provisions (§§ 9000-9003)
 - Chapter 2. Notice to Creditors (§§ 9050-9054)
 - Chapter 3. Time for Making Claims (§§ 9100-9104)
 - Chapter 4. Making of Claims (§§ 9150-9153)
 - Chapter 5. Claims by Surviving Spouse (§§ 9200-9202)
 - Chapter 6. Claims by Public Entities (§§ 9250-9254)
 - Chapter 7. Allowance and Rejection of Claims (§§ 9300-9307)
 - Chapter 8. Claims Established by Judgment (§§ 9350-9354)
 - Chapter 9. Claims in Civil Actions (§§) *[Work in Progress]*
- Part 5. Estate Management *[Staff Draft of TR prepared]*
 - Chapter 1. General Provisions (§§ 9600-9640)
 - Article 1. Duties and Liabilities of Personal Representative
 - Article 2. Court Supervision
 - Article 3. Summary Determination of Disputes
 - Article 4. Joint Personal Representatives
 - Article 5. Independent Administration
 - Chapter 2. Estate Management Generally (§§ 9650-9656)
 - Chapter 3. Deposit of Money and Personal Property with Financial Institutions (§§ 9700-9705)
 - Chapter 4. Investments and Purchase of Property (§§ 9730-9735)
 - Chapter 5. Operation of Decedent's Business (§§ 9760-9763)
 - Chapter 6. Abandonment of Tangible Personal Property (§§ 9780-9789)
 - Chapter 7. Borrowing, Refinancing, and Encumbering Property (§§ 9800-9807)

- Chapter 8. Actions and Proceedings by or Against Personal Representative (§§ 9820-9824)
- Chapter 9. Compromise of Claims and Actions; Extension, Renewal, or Modification of Obligations (§§ 9830-9837)
- Chapter 10. Acceptance of Deed in Lieu of Foreclosure or Trustee's Sale; Grant of Partial Satisfaction or Partial Reconveyance (§§ 9850-9851)
- Chapter 11. Conveyance or Transfer of Property Claimed to Belong to Decedent or Other Person (§§ 9860-9868)
- Chapter 12. Purchase of Estate Property by Personal Representative (§§ 9880-9885)
- Chapter 13. Dedication or Conveyance for Street or Highway Purposes or of Easement or Access Right (§§ 9900-9901)
- Chapter 14. Exchange of Property (§§ 9920-9922)
- Chapter 15. Leases (§§ 9940-9948)
- Chapter 16. Granting Option to Purchase Real Property (§§ 9960-9965)
- Chapter 17. Option to Purchase Given in Will (§§ 9980-9983)
- Chapter 18. Sales (§§ 10000-10382)
 - Article 1. General Provisions (§§ 10000-10005)
 - Article 2. Contract With Agent, Broker, or Auctioneer (§§ 10150-10151)
 - Article 3. Compensation of Agent, Broker, or Auctioneer (§§ 10160-10167)
 - Article 4. Special Provisions Applicable to Particular Types of Property (§§ 10200-10207)
 - Article 5. Sale of Personal Property (§§ 10250-10263)
 - Article 6. Sale of Real Property (§§ 10300-10315)
 - Article 7. Vacating Sale for Purchaser's Default (§§ 10350-10351)
 - Article 8. Application of Sale Proceeds of Encumbered Property; Sale to Lienholder (§§ 10380-10382)
 - Article 9. Damages and Recovery of Property (§§ 10380-10382)
- Part 6. Independent Administration of Estates *[TR Distributed]*
 - Chapter 1. General Provisions (§§ 10400-10404)
 - Chapter 2. Granting or Revoking Independent Administration Authority (§§ 10450-10454)
 - Chapter 3. Administration Under Independent Administration Authority (§§ 10500-10502)
 - Chapter 4. Advice of Proposed Action (§§ 10550-10561)
 - Chapter 5. Forms (§§ 10600-10603)
- Part 7. Compensation (§§ 10800-) *[Questionnaire Distributed]*
- Part 8. Accounting *[Work in Progress]*
 - Chapter 1. General Provisions (§§ 10900-10901)
 - Chapter 2. When Account Required (§§ 10950-10954)
 - Chapter 3. Settlement of Account (§§ 11000-11001)
 - Chapter 4. Compelling Accounting (§§ 11050-11052)
- Part 9. Payment of Debts, Expenses, Charges, and Taxes *[TR Distributed]*
 - Chapter 1. General Provisions (§§ 11400-11410)
 - Chapter 2. Allocation of Claim Between Estate and Surviving Spouse (§§ 11450-11456)

- Part 10. Distribution of Estate *[TR Distributed]*
 - Chapter 1. Order for Distribution (§§ 11600-11641)
 - Article 1. General Provisions
 - Article 2. Preliminary Distribution
 - Article 3. Final Distribution
 - Chapter 2. Determination of Persons Entitled to Distribution (§§ 11700-11705)
 - Chapter 3. Distribution to Persons Entitled (§§ 11750-11753)
 - Chapter 4. Deceased Distributee (§§ 11800-11802)
 - Chapter 5. Deposit with County Treasurer (§§ 11850-11854)
 - Chapter 6. Distribution to State (§§ 11900-11904)
 - Chapter 7. Partition or Allotment of Property (§§ 11950-11956)
- Part 11. Closing Estate Administration *[TR Distributed]*
 - Chapter 1. Time for Closing Estate (§§12200-12206)
 - Chapter 2. Discharge of Personal Representative (§§ 12250-12252)
 - Chapter 3. Statutes of Limitation; Effect of Discharge (§§ 12300-)
- Part 12. Administration of Estates of Missing Persons Presumed Dead (§§ 12400-12409) *[TR 9/86]*
- Part 13. Nonresident Decedent (§§ 12500-) *[Work in Progress]*

DIVISION 8. DISPOSITION OF ESTATE WITHOUT ADMINISTRATION

(§§ 13000-13660) *[Enacted, operative 7/1/87]*

- Part 1. Collection or Transfer of Small Estates Without Administration (§§ 13000-13209)
 - Chapter 1. Definitions (§§ 13000-13006)
 - Chapter 2. General Provisions (§§ 13050-13054)
 - Chapter 3. Affidavit Procedure for Collection or Transfer of Personal Property (§§ 13100-13115)
 - Chapter 4. Court Order Determining Succession to Real Property (§§ 13150-13157)
 - Chapter 5. Affidavit Procedure for Real Property of Small Value (§§ 13200-13209)
- Part 2. Passage of Property to Surviving Spouse Without Administration (§§ 13500-13660)
 - Chapter 1. General Provisions (§§ 13500-13506)
 - Chapter 2. Right of Surviving Spouse to Dispose of Real Property (§§ 13540-13542)
 - Chapter 3. Liability for Debts of Deceased Spouse (§§ 13550-13554)
 - Chapter 4. Collection by Affidavit of Compensation Owed to Deceased Spouse (§§ 13600-13606)
 - Chapter 5. Determination or Confirmation of Property Passing or Belonging to Surviving Spouse (§§ 13650-13660)

DIVISION 9. TRUSTS (§§ 15000-18201) *[Enacted, operative 7/1/87]*

- Part 1. General Provisions (§§ 15000-15006)
- Part 2. Creation, Validity, Modification, and Termination of Trusts (§§ 15200-15413)
 - Chapter 1. Creation and Validity of Trusts

- Chapter 2. Restrictions on Voluntary and Involuntary Transfers
- Chapter 3. Modification and Termination of Trusts
- Part 3. Trustees and Beneficiaries (§§ 15600-15803)
 - Chapter 1. Trustees
 - Article 1. General Provisions
 - Article 2. Cotrustees
 - Article 3. Resignation and Removal of Trustees
 - Article 4. Appointment of Trustees
 - Article 5. Compensation and Indemnification of Trustees
 - Chapter 2. Beneficiaries
- Part 4. Trust Administration (§§ 16000-16462)
 - Chapter 1. Duties of Trustees
 - Article 1. Trustee's Duties in General
 - Article 2. Trustee's Standard of Care
 - Article 3. Trustee's Duty to Report Information and Account to Beneficiaries
 - Article 5. Duties of Trustees of Private Foundations, Charitable Trusts, and Split-Interest Trusts
 - Chapter 2. Powers of Trustees
 - Article 1. General Provisions
 - Article 2. Specific Powers of Trustees
 - Chapter 3. Revised Uniform Principal and Income Act
 - Chapter 4. Liability of Trustees to Beneficiaries
 - Article 1. Liability for Breach of Trust
 - Article 2. Remedies for Breach of Trust
 - Article 3. Measure of Liability
 - Article 4. Limitations and Exculpation
- Part 5. Judicial Proceedings Concerning Trusts (§§ 17000-17507)
 - Chapter 1. Jurisdiction and Venue
 - Chapter 2. Notice
 - Chapter 3. Proceedings Concerning Trusts
 - Chapter 4. Testamentary Trusts Subject to Continuing Court Jurisdiction
 - Article 1. Administration of Testamentary Trusts Subject to Continuing Court Jurisdiction
 - Article 2. Removal of Trusts From Continuing Court Jurisdiction
 - Chapter 5. Transfer of Trust to Another Jurisdiction
 - Chapter 6. Transfer of Trust from Another Jurisdiction
- Part 6. Rights of Third Persons (§§ 18000-18201)
 - Chapter 1. Liability of Trustee to Third Persons
 - Chapter 2. Protection of Third Persons
 - Chapter 3. Rights of Creditors of Settlor

DIVISION 10. PRORATION OF TAXES [Enacted, operative 1/1/87]

- Part 1. Proration of Estate Taxes (§§ 20100-20125)
 - Chapter 1. General Provisions
 - Chapter 2. Proration
 - Chapter 3. Judicial Proceedings
- Part 2. Proration of Taxes on Generation-Skipping Transfer (§§ 20200-20225)
 - Chapter 1. General Provisions
 - Chapter 2. Proration
 - Chapter 3. Judicial Proceedings

DIVISION 11. CONSTRUCTION OF WILLS, TRUSTS, AND OTHER INSTRUMENTS

[Work in Progress]

- Part 1. General Provisions (§ 21100)
- Part 2. Special Rules Governing Wills (§ 21210)
- Part 3. Exoneration and Ademption (§ 21310)
- Part 4. Abatement and Interest and Income (§ 21410)
- Part 5. Marital Deduction Gifts (§ 21510)
- Part 6. No Contest Clauses (§ 21610)

Memo 86-81

Exhibit 2

1987 LEGISLATIVE PROGRAM
(Summary)

URGENCY BILLS

Application of Trust Law to Excluded Trusts

OTHER BILLS

Retroactive Application of Property Division Legislation ?

Clean Up Bill on Trust Law (if necessary - perhaps can include
clean up provisions in general probate bill)

1987 Basic Probate Bill:

Estate Management Provisions

Independent Administration Provisions

Preliminary Provisions and Definitions (Revision of Existing
Sections)

Administration of Estates of Missing Persons Presumed Dead

Nonresident Decedents ?

General Provisions Relating to Notices ?

Notices Under Guardianship-Conservatorship Law

Clean Up Provisions and Other Minor Matters That Can be Added
to Bill if Work on Them is Completed in Time

Public Guardian and Public Administrator Provisions (separate bill)

Exhibit 3

DREISEN, KASSOY & FREIBERG

A PROFESSIONAL CORPORATION

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September 17, 1986

Nat Sterling
California Law Revision Commission
4000 Middlefield Road, #D-2
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Re: Numbering New Sections and Setting Priorities
in Regard to December Probate Bill

Dear Nat:

Thank you for promptly sending me the July 16, 1986 outline of the new Estate and Trust Code. I have studied it in light of the Commission's expressed desire for a December bill to be submitted to the legislature. As a result of that study, I have come to the following conclusions (which will be recommendations to our Executive Committee at its next meeting).

Of the ten Divisions of the new Estate and Trust Code, almost eight are substantially complete. This is very encouraging. While Division 7 is incomplete and is important, still the progress to date is encouraging.

The numbering of new and old sections do not conflict in a way which is likely to lead to any problems. Since new Division 3 is undrafted, the maximum potential overlap between new and old Sections will be of Sections 300-453. Virtually all of existing Sections 300-453 are covered by the materials found in the Opening Estate Administration Tentative Recommendation distributed in April. This Tentative Recommendation is ripe for discussion of comments and putting into bill form. If it is part of the December bill, then there may be no overlapping numbers between the new provisions and the existing law. A Section by Section review should be made so that any isolated Sections not covered by that Tentative Recommendation or other matters incorporated into the December bill are renumbered to avoid conflict.

Since there should not be any conflicts or overlaps between the new and old numbering, the only remaining numbering problem of introducing a bill in December is the issue of cross-references. I see no problem with cross-references to the existing law. For instance, cross-references to notice could be to the existing law of notice until such time as that matter is studied further by the Commission. It is no worse than the existing state of the law which is partly new and partly old.

Alternatively, you could renumber all existing sections in accordance with the new outline. I do not recommend this approach, because I foresee further re-numbering as the new statutes are refined.

I see no reason to make practitioners learn two new sets of numbers in light of the lack of necessity of change at this time.

The next major issue is what should be in the December bill in light of the current status of the Commission's work. I would recommend that the bill include the following studies:

1. Opening Estate Administration
2. Independent Administration
3. Distribution and Discharge
4. Creditor Claims and Payment of Debts
5. Definitions
6. Inventory and Appraisal
7. Estate Management

The first 4 have been in Tentative Recommendation form for some time. Comments should have been received by now and they are ripe for review of those comments. Items 5 and 6 were substantially completed at the last meeting and should be ready to distribute as Tentative Recommendations after the October meeting at the latest. Item 7 is important to the overall scheme of things. It has received extensive review. It should be ripe for approval as a Tentative Recommendation after the October meeting.

While there are other studies ripe for a December bill, I believe they are less important than the seven listed above. I believe they should only receive consideration at a meeting or inclusion in the bill after the seven priority items have been addressed. Studies that fall in this category include:

- A. Public Administrators & Public Guardians
- B. Determining Class Membership
- C. Administration of Estates of Missing Persons
- D. Abatement
- E. Appeals
- F. Nonresident Decedent
- G. Marital Deduction Gifts
- H. Accountings

Finally, there is a third category of material -- Studies which still need further detailed consideration before they are ready for distribution as Tentative Recommendations. Among matters that should receive prompt attention are those relating to Notices; Compensation, Commissions and Fees; and Rules of Procedure. These are important matters which should be completed as soon as possible. The Tentative Recommendations in these areas are likely to elicit a lot of comments.

Nat Sterling
September 17, 1986
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DREISEN, KASSOY & FREIBERG
LAWYERS

Obviously, it is up to the Commission to set its own priorities and to decide on the timing of these matters. However, since the Commission has asked the opinions of the Bar, I have been so bold as to formulate these suggestions. After our Executive Committee meets, I will be letting you know our official recommendations.

Sincerely,



Valerie J. Merritt

VJM:la

cc: Executive Committee of Probate & Trust Law Section
of Los Angeles County Bar Association
James V. Quillinan, Esquire
James D. Devine, Esquire